IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Osorio *et al.*	Atty. Docket No.:	011738.00149
Serial No.:	10/687,344	Group Art Unit:	3736
Filed:	October 15, 2003	Examiner:	Michael C. Astorino
For:	SCREENING TECHNIQUES FOR MANAGEMENT OF A NERVOUS SYSTEM DISORDER	Confirmation No.:	7817

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Request for Review is responsive to the Final Office Action dated November 14, 2006. A notice of appeal and a request for a three-month extension is being filed concurrently with this request for review. As Applicants filed a response to the Final Office Action by the two-month date and no advisory action has been mailed, it is believed that no extension fees are required. However, if any fees are due or if any overpayment has been made, the Commissioner is authorized to credit or debit our Deposit Account No. 19-0733, respectively.

Discussion and Argument

The Final Office Action mailed November 14, 2006 ("Final Action") rejected claims 1-8, 11-12 and 14-23 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,678,548 to Echauz *et al.* ("Echauz") or under 35 U.S.C. § 103(a) as being unpatentable over Echauz in view of U.S. Patent No. 6, 529,774 to Greene ("Greene"). Thus, all claims stand rejected based on Echauz, alone or in combination with Greene. For purposes of this paper, the discussion regarding independent claim 1 also applies to independent claims 15 and 21.

Independent claim 1 recites, in relevant part, "receiving a first indication whether the treatment therapy is acceptable to the patient...." The Final Action, pg. 3, suggested that this feature is inherent in Echauz because there is continued use of the system of Echauz. Therefore, as previously noted in the January 15, 2007 Response to the Final Office Action (Response), pg. 8, it is undisputed that Echauz fails to expressly disclose this feature.

As previously discussed, Response pg. 8, to support a suggestion that this feature is inherent in Echauz requires a showing that this feature is necessarily present in Echauz (e.g., that Echauz necessarily requires this feature to function). *See* MPEP § 2112 (IV). However, in the Response, pg. 8, it was noted that Echauz discloses the use of a probabilistic based detection algorithm for estimating the likelihood of a seizure and modifying treatment and also discloses a quality of life index (QOLI) to determine if the patient is improving. Echauz, Abstract. As Applicants explained, Response, pg. 8, the QOLI could allow the physician to determine whether the treatment was successful without receipt of an indication that the treatment therapy was acceptable to the patient. Thus, as noted in the Response, pg. 8-9, analysis of the change in the number of seizures would allow a physician to determine whether the system of Echauz was working as desired and the continued use of a system according to Echauz does not require receipt of "a first indication whether the treatment therapy is acceptable to the patient" as recited in independent claim 1.

Consequentially, as discussed previously, there is no support for the suggestion that continued use of the system of Echauz requires the receipt of "a first indication whether the treatment therapy is acceptable to the patient." Response, pg. 9. Therefore, the system of Echauz fails to inherently disclose receiving "a first indication whether the treatment therapy is acceptable to the patient." As Echauz also fails to expressly disclose all the features of claim 1, Echauz cannot be said to disclose at least one feature of independent claim 1 and fails to anticipate claim 1.

The Final Action did not suggest that Greene corrected this deficiency in Echauz, thus independent claim 1 is also patentable over the combination of Echauz and Greene. Independent claims 15 and 21 recite a feature similar to the above discussed feature of claim 1, thus they are also patentable over the combination of Echauz and Greene.

Looking next at independent claim 18, the Final Action suggested that claim 18 was rejected for reasons similar to why claim 1 was rejected. Final Action, pg. 3. Prior office action suggested that the rationale being applied to rejection 18 was the same as the rationale used to reject claims 1-9 and 12-13. Office Action of August 9, 2005, pg. 4. However, as previously noted, claim 18 recites features that are simply not present in claim 1 (or claims 1-9 and 12-13), therefore the rationale used with respect to claim 1 cannot be applied to claim 18. Response, pg. 9. For example, as noted in the Response, pg. 9, the feature "using an output from the detection algorithm to identify at least one neurological event focus location that is associated with the neurological event" is recited in claim 18 but is not recited in claim 1 (or claims 1-9 and 12-13). Thus, Applicants' previous comment that no ground of rejection has been provided for this feature and that Echauz does not appear to disclose this feature stand unrebutted. Response, pg. 9. Accordingly, the Final Action has failed to provide a proper rationale for how claim 18 can be considered rejected by Echauz and the rejection cannot fairly be maintained.

In summary, at least one feature of independent claims 1, 15 and 21 is neither expressly nor inherently disclosed by Echauz. In addition, a convincing ground of rejection for independent claim 18 has not been provided. Consequentially, the pending claims 1-8, 12-13, and 15-23 are patentable over the references of record and the rejections of claims 1-8, 12-13, and 15-23 should be withdrawn.

Respectfully submitted,

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Dated: May 14, 2007

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